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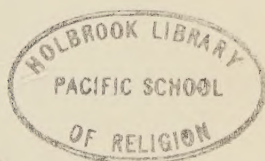
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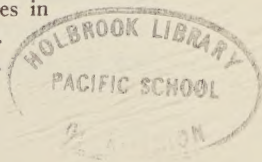
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EDITORIAL

"The relation between Church and State is the greatest subject in the history of the West," says Emil Brunner. Though more than a decade has passed since Brunner wrote these words, their force and validity seem even more obvious today than at the time they were written. For there is today, perhaps as never before, a growing volume of literature on the subject of church and state and a greater expressed concern regarding the gravity and complexity of the problem of their relationship. The Christian Church, both Roman Catholic and Protestant branches, has been made painfully aware that the problem is by no means resolved, even in the West, after almost fifteen centuries of the supremacy of the Christian faith. In 1947 Christians and Jews in America formed an undenominational agency known as Protestants and Other Americans United for the Separation of Church and State (POAU). In the lands of the younger churches, the problem of religious liberty and the rights of Christian minorities, as well as other religious minorities, remains one of the great concerns of the Christian world mission today. In recent years, specific commissions on religious liberty have been named by the International Missionary Council, the National Council of Churches, the World Council of Churches, the American Jewish Congress, and by most of the major denominations. In addition, the significance of the church and state problem has been recognized by the United Nations organization through its own pronouncements and special commissions concerned with human rights and religious liberty. Two facts seem to stand out in bold relief: one is that the problem of church and state is widely recognized as being of great importance and of particular relevance today; and the other is that much study yet needs to be made concerning the relationship of the church and state in the modern world, for the problem is a perennial one.

The doctrine of the church continues to be the great theological concern of the Christian community around the world, both in its inter-denominational and world-wide relations. Even those denominations such as Baptists, which have stood in history for religious liberty for every man of faith and of no faith and therefore the absolute necessity of the separation of church and state,

have, to quote M. Searle Bates, become "utterly oblivious of its noble tradition of [religious] liberty." For some, there is no clearly defined principle to be delineated, particularly if their own religious community is not in jeopardy. For still others, the problem of church and state would appear to be restricted to those periods of history or to those nations in which there have been open conflicts. To be sure, the problem of the relationship of church and state is aggravated by such political phenomena as intense nationalism, totalitarianism, the modern welfare state which seeks to administer to the total needs of its citizens, and the democracy that insists upon the *rule* of the majority with often little or no regard for the rights of the minority—political, racial, or religious. In the final analysis, however, the problem of church and state is inherently one of conflict between the Christian faith and the nation state. Oscar Cullman states the case well when he says that the problem is "one which arises because of the very essence and presuppositions of the Christian faith. It is a problem which exists also in countries and times in which there appears to be no conflict at all."

Since 1957 Baylor University has maintained a specially endowed program called the J. M. Dawson Studies in Church and State, named in honor of a distinguished alumnus, honored preacher, author of several books on church and state, the first Executive Director of the Baptist Joint Committee on Public Affairs, and a founding father of Protestants and Other Americans United for the Separation of Church and State. The purpose of this program is primarily one of research and publication in the broad area of church and state relations. With the launching of this journal, opportunity is given for the publication of articles, case studies, monographs, and book reviews on matters related to religious liberty and church and state. There is nothing narrow or restrictive about the journal. Diverse points of view will be welcomed and it is hoped that prevailing attitudes of various denominations will be presented. Research and investigation can provide no glib or easy answers to what is admittedly one of the most complex and agonizing problems of our time. This particular issue of the journal concerns itself with the emergence of religious freedom and the principle of the separation of church and state in colonial America. It is hoped that this journal may find a real place in the growing interest, discussion, and literature concerning church-state relations.

THE EUROPEAN BACKGROUND OF AMERICAN FREEDOM

JOHN W. SHEPARD, JR.

To reach the real sources of the American concept of freedom it would be necessary to explore the annals of antiquity. The search would lead at least as far back as the civilizations of the Hebrews and Greeks, from which came the social and spiritual roots of modern Western life. Though freedom in the contemporary sense cannot be found as a concept in the thought life of these civilizations, it is implicit in both the Judeo-Christian religion and Greek philosophy. In the former, the conviction that man was created in the "image of God" and the priceless value placed upon personality by Jesus led inevitably to ideas of human dignity and freedom. In the latter, the high estimate placed on human creativeness and the emphasis on the ability of the human mind to reach perfection also led in the direction of the modern idea of freedom. Somewhat later, the democratic organization of the barbarian German tribes produced a society of free individuals who, when brought to England in the early centuries of the Christian era, led to the concept of the "rights of free Englishmen," an expression which is found in the Magna Charta.¹

These early sources of the idea of freedom, however, are not seen explicitly in the concept of freedom as it has developed in America during the past three and a half centuries. The immediate background of American freedom is to be found rather in the birth of modern society in the West at the time of the Renaissance and Reformation, a time which saw the disintegration of feudalism and the emergence of a new social, political, economic, and religious orientation. It was within this new society that a philosophy of freedom arose which was soon transplanted to the American colonies and became an essential part of the infant American culture.

Preliminary to an examination of the emergence of the idea of freedom in modern society, however, one must analyze briefly the structure and psychology of medieval society, the soil

¹For a brief but excellent discussion of the early English sources of the concept of freedom, see J. R. Green, *A Short History of the English People* (2 vols.; London: J. M. Dent and Sons, Ltd., 1915), I, 2-4, 119-123.

from which the new culture sprang, and to note especially the relationship of medieval life to the question of freedom. The fundamental quality of medieval civilization was the harmony between the individual and the society which was a hierarchy of ascending orders in which each man had his God-appointed function and recognized obligations, and at the same time his rights and privileges.² Each individual was an essential organ of the whole, discharging a function peculiar to himself and necessary to the full life of Christendom. Only through his participation in this group life could the individual attain his own ends and, conversely, only with the aid of every individual and every group could society afford the appropriate setting for the full life of its individual members. All men existed in and for each other in an intricate network of mutual obligations. The characteristic of medieval life which contrasts most strikingly with the modern world is its rigidly hierarchical character. From the lowest serf bound for life to the soil up through the free yeomanry and the rising grades of nobility to the monarch, social status and function were determined at birth.

In such a rigidly hierarchical society, it was natural that there was little which could be called personal freedom. Everyone was chained to his role in the social order, and for the peasant there was no hope. The medieval church stressed the dignity of man and the freedom of his will, but did little to remedy the situation. In fact, the church and the social system tended toward mutual support. It did condemn arbitrary tillages and urged that the serf be treated humanely. It sometimes described the manumission of the serf as an act of piety, like gifts to the poor.³ But to set free the individual was not to condemn the institution. As a matter of fact, the church, in its habitual stand through the centuries against any expression of religious freedom consciously or unconsciously aligned itself alongside all those forces in the social order which resisted the rise of freedom in European social and economic life.⁴ However, it is true that, although medieval man was not free in the modern sense, neither was he alone and isolated. In having a distinct, unchangeable and unquestionable

²J. H. Randall, Jr., *The Making of the Modern Mind* (Boston: The Houghton Mifflin Co., 1926), pp. 58, 59.

³R. H. Tawney, *Religion and the Rise of Capitalism* (New York: Harcourt, Brace and Co., 1925), pp. 20ff.

⁴A classic picture of the medieval church's fear of freedom is shown in Dostoyevsky's parable of the Grand Inquisitor. See Fyodor Dostoyevsky, *The Brother's Karamazov* (New York: Modern Library, n. d.), pp. 255f.

place in the social world from the moment of birth, man was rooted in a structuralized whole, and thus life had a meaning which left no place for doubt.⁵ The breakdown of medieval society had a two-fold result in the realm of personality. Man was deprived of the security he enjoyed, and he was turned loose from the world which had satisfied his quest for security both economically and spiritually. But he was free to think and act independently, to become his own master and to do with his life as he could, not as he was told.

There was a complex pattern of interacting social forces which brought about the disintegration of medieval society and the birth of a new age in Western history.⁶ The rising commercial and financial interests in the cities pried loose the cement of the feudalistic economic structure. The peasants sloughed off their hereditary serfdom. Individuals within and without the church hammered away at its excessive authority and abuses. The rising nobility supported the Reformers in order that they might be free of ecclesiastical control. Out of this ferment of forces came a new society, and within this society a new concept of individual freedom emerged. To define all the elements which contributed to the emergence of this new idea of freedom would be an impossible task, but there were two movements, two streams of thought, which in this period made a peculiar contribution to the idea of freedom as it developed through the early years of American history. The first of these was the Protestant Reformation, the influence of which was felt in America particularly through the Puritans in the seventeenth century. The second was the rationalistic Enlightenment, child of the revival of classical liberalism in the Renaissance, whose force began to be felt in the late seventeenth century and reached its full strength in the eighteenth. It is within the context of these two movements that this study will proceed to examine the background of American freedom.

THE REFORMATION AND FREEDOM

The German Reformation led by Martin Luther was the decisive element in the disintegration of medieval society. For it was in the church that there existed the moral sanction around which the feudal system continued to cohere. Once that sanction was effec-

⁵For a penetrating psychological study of personality in medieval society, see Erich Fromm, *Escape from Freedom* (New York: Rinehart and Co., 1941), pp. 40ff.

⁶Tawney, *op. cit.*, pp. 81f.

tively challenged, the system was doomed. Of course, Luther was only the leader of the dramatic culmination of a movement which had been taking shape over many years, a movement which included many individuals and influences sometimes foreign and even antagonistic in spirit to the Lutheran reform. It is true that the view that the breakdown of the medieval system can be traced entirely to the loss of control over society by the Roman Catholic Church has long since been abandoned. On the other hand, it is presumptuous to claim that the break with the medieval church by the Reformers was largely the result of previous social and economic trends. It is not doing violence to the facts to assign an active role in the process, possibly a decisive role, to the work and personality of Martin Luther.

The contribution of Luther to the Western idea of freedom is significant, but it was primarily derivative and indirect. It stemmed largely from two doctrines which Luther most emphasized: justification by faith and the priesthood of all believers. The result of Luther's teaching at these points was religious individualism, that inwardness of communion with God which is independent of man and priesthood.⁷ The whole idea of mediation through a hierarchy and through sacramental grace was virtually swept away. In its place stood the individual, dependent on God alone for his salvation and responsible only to God for his behavior. This direct relationship of man to God in Lutheran theology is basic to an understanding of the Lutheran view of freedom. The definitive statement of his position is found in Luther's *Treatise on Christian Liberty*, published in 1520 during the heated controversy with the defenders of the Catholic Church. According to Luther, "a Christian man is a perfectly free lord of all, subject to none. A Christian man is a perfectly dutiful servant to all, subject to all."⁸ Faith in God alone meant a freedom from all earthly authority, but obedience to God meant that the Christian would voluntarily become "servant to all."

This Lutheran concept of freedom, however, was intended only for Christians, and its application was to be made only in the religious context. When Luther's challenge to the authority of the Catholic hierarchy led to a revolt on the part of the German

⁷Ernest Troeltsch, *The Social Teaching of the Christian Churches* (2 vols.; New York: The Macmillan Co., 1920), I, 422.

⁸Martin Luther, *Works* (6 vols.; Philadelphia: A. J. Holman Co., 1916), II, 312.

peasants against their masters, Luther took a firm stand on the side of authority. In a pamphlet entitled *A Sincere Exhortation to All Christians to Beware of Rioting*, written in 1521, Luther warned, "I shall always side with those who condemn rebellion and against those who cause it."⁹ His position became dramatically evident during the Peasant's Revolt a few years later. In the Twelve Articles, issued in 1525, which expressed the nature of the grievance of the uprising, the peasants demanded freedom from serfdom, freedom from oppressive taxation and forced labor, and unrestricted rights of hunting and woodcutting in the forest. The significant fact was that everywhere in this document was the implicit claim that the rights of the people are sanctioned by the law of God, and everywhere it was assumed that the peasants were acting in accordance with the new "gospel" of Luther.¹⁰ Luther condemned all but two of the Articles, neither of which was significant, and opposed freedom for the serf because it made Christian liberty an external thing and because Paul had said that the bondsmen should not seek to be free. The very thought of political and economic freedom seemed an intrusion upon his ideals.¹¹

Inevitably, however, Luther's idea of spiritual freedom gave encouragement to forces working for social, economic, and political liberation. Luther had denounced the extortions and corruptions of the great church officials as contrary to the teachings of Jesus. The peasant could not see why the extortions and corruptions of the secular lords were any less contrary to the gospel, particularly since the spiritual and secular functions were often united in the same person. Even if the line of distinction between spiritual and bodily oppression was clear to a trained theologian like Luther, the common man could hardly be expected to be either able or willing to make such a distinction.¹² Against his will, Luther became perhaps the initial major contributor to the development of the idea of individualism and personal freedom in this period of Western history.

More directly influential through his spiritual heirs in the formation of the American tradition of freedom was the Genevan Reformer, John Calvin. Like Luther, however, he aided the develop-

⁹Luther, *Werke* (Erlangen), XXII, 43, quoted in J. S. Schapiro, *Social Reformation* (New York: Columbia University Studies in Political Science, 1909), p. 78.

¹⁰Preserved Smith, *The Age of the Reformation* (New York: Henry Holt and Co., 1920), p. 93.

¹¹Schapiro, *op. cit.* p. 88.

¹²*Ibid.*, p. 16.

ment of ideas of civil liberty only indirectly. Calvin's interest was principally theological, but his doctrine of predestination again led to individualism, in the spiritual isolation of man's relationship to God. Calvin dealt more in detail with the relationship of the individual to civil government than did Luther, and he insisted, as did Luther, that Christian liberty did not mean resistance to civil authority.¹³ However, Calvin differed from Luther in that for him obedience to civil authority depended on certain conditions, the chief of which was that the government was to "cherish and support the worship of God."¹⁴ If these conditions were not met, opposition was strongly suggested.¹⁵ Rulers were to be obeyed only as long as they obeyed God. Implied in this idea was the right of opposition to governmental authority.

The immediate outcome of Calvin's position was not, of course, civil liberty. Once he had the power, Calvin did change the government of Geneva to conform to his beliefs. The result was religious autocracy, highly restrictive of civil and particularly religious liberty. Indeed, in the struggle between liberty and authority, the Genevan community sacrificed liberty, not with reluctance, but with enthusiasm.¹⁶ Calvinism, however, was generally favorable to the progress of civil liberty. The belief that God is all-powerful and man is comparatively insignificant made the adherents of this doctrine bold toward human rulers and defiant toward their commands when those commands conflicted with the Calvinists' rights and privileges. Thus, both an intense individualism and a rigorous Christian socialism could be deduced from Calvin's doctrine. Whichever predominated depended on differences of political environment and social class. It depended, above all, on the question of whether Calvinists were, as in Geneva or Scotland, a majority who could stamp their ideals on the social order or, as in England, a minority, living on the defensive under the eyes of a suspicious government. Among the refugees at Geneva were a number of Protestants from England who had been driven from home by the persecutions under Queen Mary. When these exiles returned to their homeland, they brought with them religious notions more radically Protestant than those held by a majority of the ad-

¹³H. O. Taylor, *Thought and Expression in the Sixteenth Century* (2 vols.; New York: The Macmillan Co., 1920), I, 422.

¹⁴John Calvin, *Institutes of the Christian Religion* (2 vols.; Philadelphia: Presbyterian Board of Publication, n.d.), II, 772.

¹⁵*Ibid.*, II, 804, 805.

¹⁶Tawney, *op. cit.*, pp. 131, 132.

herents of the Anglican Church. It was from these radicals and others of like belief that the Puritan dissenters were recruited.

The English Puritans of the early seventeenth century were indoctrinated with the political as well as theological philosophy of Calvinism and did not overlook its democratic teachings, for they were quick to resent any infringement of their rights by their rulers. To justify themselves, they appealed to eternal principles; and the great principle that they discovered was that of liberty, or more specifically, of the liberties of Englishmen.¹⁷ They emphasized the doctrine of Christian liberty and used it to support their campaign for religious liberty. Although they made religious liberty only a Christian birthright, the fact that they continually discussed it brought it to the attention of non-Puritans. Although they intended it to be applied only in the field of personal religious liberty, others were willing to make applications elsewhere.¹⁸ The separation of church and state, the diversity of religious creeds freely held within a common civil framework, the spirit of inquiry and discussion, the ideal of voluntary agreement, the appeal from political authority to the universal sentiments of conscience and reason—all these important aspects of the modern idea of freedom can be traced more or less directly to the Puritan protest in England during the late sixteenth and early seventeenth centuries.¹⁹

The outcome of this protest was the Puritan Revolution of the mid-seventeenth century which, with all its excesses, was an important step in the progress of freedom in England. The spokesman of the Revolution was the poet John Milton, whose doctrine of liberty showed both Puritan influences and those of the "natural rights" philosophy which became dominant during the following century. According to Milton, all men are naturally born free, being in the image of God, and remain so until, from the root of Adam's transgression, they begin to do violence among themselves. Foreseeing that such a course would lead to their mutual destruction, they formed a league, or government, to bind each other from mutual injury and defend themselves against any who would give disturbance or opposition to such a movement.²⁰ Milton emerged with a two-sided view of liberty, the "liberty to serve God and

¹⁷Preserved Smith, *A History of Modern Culture* (2 vols.; New York: Henry Holt and Co., 1930), I, 224.

¹⁸A. S. P. Woodhouse, *Puritanism and Liberty* (London: J. M. Dent and Sons, Ltd., 1938), pp. 80f.

¹⁹R. B. Perry, *Puritanism and Democracy* (New York: The Vanguard Press, 1944), pp. 358, 359.

²⁰John Milton, "The Tenure of Kings and Magistrates," in *English Prose Writings* (London: George Routledge and Sons, 1889), pp. 358f.

to save his own soul" and "the civil rights and advancements of every person according to his own merit."²¹ Milton's idea of liberty was found primarily in rational self-government, in sobriety of conduct, and in integrity of life. But this liberty implied free worship, free speech, free marriage and divorce, and freedom in general from the tyranny of custom.²² Milton's ideal of state polity was a republic. Arguing that men are naturally born free, with the power of self-defense and self-preservation, he concluded that the state had been founded by agreement, and that kings and magistrates were elected deputies, without power save as it was delegated by the people. The people had a right to change their government and to depose and punish kings.²³

The thought of the English Puritans, culminating in Milton, represented the most advanced development in the Reformation concept of freedom as it led to the establishment of freedom in America. For reasons of brevity, it has been necessary to confine the discussion to the main stream of Reformation thought. A complete analysis must give attention to the Anabaptists and other radical sects in Europe, and especially to the Brownist and Baptist groups in England, which contributed an important part to American foundations.²⁴ Because they were always persecuted minorities, their emphasis on religious freedom was even clearer and more insistent than that of the Lutherans and Calvinists. Their peculiar contribution to the ideal of freedom was in their democratic ecclesiastical ideal which emerged as the ideal of free churches, the democratic constitution of their individual congregations, their autonomous individualism based on the will of God and the fact of redemption, and their systematic and positive industry.²⁵ This contribution flowed naturally into the main stream, the principal source of which was Calvinism as it developed in the English Puritan movement.

The Reformation is thus seen to have prepared the way for the democratic concept of freedom, although this preparation developed against the actual intention of the Reformers. Luther had shown that there could be a way of salvation outside the medieval church, and had appealed to a rational interpretation of scriptural authority

²¹"A Free Commonwealth," in *ibid.*, p. 432.

²²Smith, *op. cit.*, I, 226, 227.

²³Milton, *op. cit.*, p. 362.

²⁴For a brief account of the early contribution of Baptists in England to religious liberty, see Robert G. Torbet, *A History of the Baptists* (Philadelphia: The Judson Press, 1950), pp. 75f.

²⁵Troeltsch, *op. cit.*, II, 818.

to support him. A breach had been made in the closed universe of medieval belief, and the long fight for liberty had been started.²⁶ Though anything but consciously rational in their purposes, the innovating leaders of the Reformation did assert, at least for themselves, the right of private judgment. They tried to deny to others the very rights they sought to secure for themselves; yet their example operated more strongly than their arguments. The religious movement became a great solvent for conservatism.²⁷ It made the masses think, passionately if not deeply, on their own beliefs. It broke the "cake of custom" and made the way for emancipations other than its own.

THE ENLIGHTENMENT AND FREEDOM

Of more direct influence in shaping the American tradition of freedom than the Reformation was the liberal Enlightenment, the force of which began to be felt in the latter part of the seventeenth century. This movement was the child of the classical revival in southern Europe known historically as the Renaissance. The basic philosophical difference between the Reformation and the Enlightenment was that, whereas the former taught men to rely on faith, revelation, and authority, and especially on the authority of the Bible as the authentic revelation of the will of God, the latter proclaimed the accessibility of truth to the faculty of the human reason. This difference had an important bearing on the question of human freedom. The Reformation insisted that freedom was dependent on God, and as such only truly accessible to the Christian. The Enlightenment made freedom an inherent right of human nature.

The view of John Milton noted above typifies the trend of thought in the middle of the seventeenth century, in which the religion of reason began to soften the temper of Puritan piety and doctrine.²⁸ This trend was related to the great interest in natural science brought about by the discoveries of such men as Isaac Newton. In the field of political philosophy there was a shift from a theological base which had characterized political thinking in the West for a thousand years, to that of human reason and "natural rights." Through the latter part of the seventeenth century, especially in England, it gradually absorbed the force of the Puritan influence in the struggle for freedom. There was a

²⁶Randall, *op. cit.*, pp. 166-168.

²⁷Smith, *The Age of the Reformation*, pp. 749-750.

²⁸Perry, *op. cit.*, pp. 190f.

deep bond between Puritanism and the Enlightenment in their common respect for the individual.²⁹ While Puritanism was authoritarian in its concept of God, the fact that the Bible was taken as the revelation of the divine will, and at the same time placed in the hands of every believer to read and interpret for himself, encouraged the individual to use his mind. The intellectual self-reliance favored the coalescence of Puritanism and the Enlightenment in the movement for freedom.

It must be noted, however, that some early representatives of the "natural rights" school, particularly Thomas Hobbes in England and Benedict Spinoza on the Continent, used the argument from human nature to support authority rather than freedom. Hobbes argued that man was antisocial in nature, and natural society was anarchy and confusion. Men, in such a state, created government to secure peace and order, and gave up their natural rights to the sovereign in exchange. His "Leviathan" was a power sufficient to coerce men and keep them in awe. The sovereign was absolute, and liberty existed only in those matters which the sovereign saw fit to leave unregulated by law.³⁰ Spinoza followed Hobbes in ignoring the element of consent in government and in denying rights to the individual against the state in his assertion that all rights are social. "Every individual has less power the more the rest collectively exceed him in power."³¹ Because of the necessity of preserving his existence and because of the essence of human nature, the free rational man voluntarily gave up his freedom to the state in order that his freedom might be more effective. He differed from Hobbes in claiming that the state must act in accordance with the laws of its being, and primarily with the security of the great good of its members. The state had the power to deprive men of liberty, but it was irrational to do so.³² Spinoza's views, like Hobbes', were no doubt greatly influenced by the confused condition of his country at the time he wrote.

The English philosopher, John Locke, was the spokesman for the Glorious Revolution of 1688 which brought constitutional government to England. His justification of the Revolution in his *Treatise of Civil Government*, which appeared in 1690, affected the development of the idea of freedom in America perhaps more than

²⁹*Ibid.*, p. 202.

³⁰Thomas Hobbes, *Leviathan* (Oxford: Basil Blackwell Press, 1946), pp. 136f.

³¹Benedict Spinoza, "A Political Treatise," in *Chief Works* (London: George Bell and Sons, 1891), p. 297.

³²Smith, *A History of Modern Culture*, I, 238, 239.

any other single work, and therefore his political philosophy requires more careful scrutiny. Although of Anglican connection, Locke was really an advocate of the "religion of nature" which was coming into favor among the intellectuals in England and France.³³ Locke's political thought was based upon the religious view which placed emphasis on the validity of human reason and discounted the importance of revelation. His optimistic view of human nature and social origins reflected "a state of perfect freedom . . . a state also of equality wherein all power and jurisdiction is reciprocal, no one having more than another."³⁴ However, he did not make it a golden age of noble savages, but a state in which there were natural laws and natural rights, of which property was one. In order to enjoy protection of life and property, men made a social contract, giving up to the government the right of determining and punishing offenses against the laws of nature.³⁵ Unlike Hobbes, however, Locke claimed that in the social contract men did not give up their natural rights. Man, by nature being free, equal, and independent, cannot be put out of this estate and subjected to the political power of another without his own consent. This consent becomes an agreement with other men to join in a community "for their comfortable, safe, and peaceable living among one another, in an enjoyment of their property and a greater security against outside foes."³⁶

The intentions with which men resigned their liberty, then, can be fulfilled only if a state has an enlightened and democratic constitution. The first and fundamental positive law must be the establishment of a legislature chosen by the public, which must be supreme because that is implied in the foundation of a society on consent. Whoever has the legislative or supreme power of any commonwealth was bound to govern by established standing laws, promulgated and known to the people, and not by extraordinary decrees. Locke also provided that if the representatives of the people betrayed their constituents, they could be overthrown by direct action.³⁷ Freedom under such a government "is to have a standing rule to live by, common to everyone in that society, and made by the legislative power elected in it; a liberty to follow my own will

³³For a discussion of Locke's religious views, see W. W. Sweet, *American Culture and Religion* (Dallas: Southern Methodist University Press, 1951), pp. 42f.

³⁴John Locke, *Treatise of Civil Government* (New York: D. Appleton and Century Co., 1937), p. 5.

³⁵*Ibid.*, p. 7.

³⁶*Ibid.*, p. 63.

³⁷Clark, *op. cit.*, pp. 270-272.

in all things, where that rule prescribes not; and not to be subject to the unconstant, uncertain, unknown, arbitrary rule or will of another man."³⁸ Here in essence is the basis for constitutional democratic government and the concept of freedom which is found in the formation of the American republic a century later.

The historical successor to Locke in his views of constitutional government was the French political thinker, Baron de Montesquieu, whose principal work, *The Spirit of Laws*, appeared about forty years after Locke's *Treatise of Civil Government*. Montesquieu was a great admirer of Locke and the English constitutional system, and was well aware of the tremendous difference between the English limited monarchy and the absolute despotism existing in France at that time. In his discussion of freedom, Montesquieu's point of departure was personal security. He recognized that security is a prerequisite of freedom, but it is obvious that such security is not possible under arbitrary absolutism.³⁹ How, then, are the safety and freedom of the citizens to be secured? Montesquieu's system of constitutional government, with the division of powers among the legislative, executive, and judicial branches as checks upon each other, was his answer to the problem. In the elaboration of his scheme, he formed a system of representative government, directly responsible to the people.⁴⁰ Montesquieu made his contribution to the American idea of freedom at this point. Locke had established liberty as a natural right, to be guaranteed by government; Montesquieu outlined the kind of government which would guarantee that liberty. Locke provided the philosophic foundation for the doctrine of liberty in the establishment of the American government. Montesquieu constructed a system of government which was literally applied in the American Constitution a half-century later—the system of checks and balances under three independent departments and the representative nature of the government—in short, a government of limited powers, dependent upon the people, as a guarantee of freedom.

In the eighteenth century there were those in England and France who emphasized the economic aspect of Locke's thought, his insistence upon property as a natural right. The Physiocrats in France, representing the rising middle class, claimed that the

³⁸Locke, *op. cit.* p. 12.

³⁹M. le Secondat, Baron de Montesquieu, *The Spirit of Laws*, (2 vols.; Worcester, Mass.: Isaac Thomas and Sons, 1803), I, 181.

⁴⁰Smith, *op. cit.*, I, 206-209.

function of government was to secure and enforce the two natural rights of liberty and property.⁴¹ Above all, it was to refrain from interfering in business, which should be left exclusively to the business man. Nature, expressing itself through business competition, should be left to its natural harmonious functioning. The state should interfere only when called upon by the business man. From Physiocratic teachings came the familiar phrase *laissez-faire*, let be, and the new conception that economic well-being results from untrammelled enterprise. A few years later it was elaborated in the work of the English economist Adam Smith, *The Wealth of Nations*, which may well be designated "the declaration of independence for modern capitalism."

There is an obviously intimate relationship between the political and economic aspects in this, the "main stream" of liberal thought during the eighteenth century. It was assumed that man was naturally good, and that reason would operate naturally in political and economic life. Government existed for the protection of life, liberty, and property through popular representation. Life, liberty, and property were to be protected by law, and wherever the law did not prescribe, man was free to act. This, of course, meant a tremendous emancipation in large areas of human life. Politically, it meant a broadening of participation of the people in government. Economically, it liberated the rising capitalist class to exploit the resources of the world which had been revealed through geographical exploration. Adam Smith was as significant to the future economic development of America as Locke was to the political. This period was an age of optimism, of confidence in human reason. It was against the background of this optimism and confidence that ideas of government and individual freedom developed in America before the Revolution.

Of course there were dissenting voices, both in England and France, who questioned the naive optimism of the "natural rights" school. In England, for example, the philosopher David Hume denied that government was established by divine right and by a social contract based upon the "consent of the governed." Rather, said Hume, the evidence showed that governments were established and maintained by conquest and power.⁴² Hume had no clear theory of government, but he seemed to prefer

⁴¹Randall, *op cit.*, pp. 324 f.

⁴²David Hume, "Of the Original Contract," in *Moral and Political Essays* (London: The Oxford University Press, 1948), pp. 147, 148.

control by "enlightened monarchy" to that of the undisciplined masses.⁴³ The French philosopher Jean Jacques Rousseau, on the other hand, argued for an absolutism of the opposite kind, the absolute rule of the "people." Rousseau agreed with Locke that man is good in the state of nature but that, with the rise of property, human inequality began.⁴⁴ The social contract, therefore, was not primarily for the protection of liberty and property, but for the maintenance of equality, and for the protection of the individuals who entered into it. Every act of sovereignty places the same obligations and confers the same benefits on all. Sovereignty is a convention between the body politic and each of its members as equals, and "every man has full title to enjoy whatever property and freedom is left him by that agreement."⁴⁵ Rousseau's thought was a healthy antidote to the *laissez-faire* mentality but raised problems of its own, particularly in the realm of the realization of absolute equality. Rousseau proposed that the government be established upon the "general will"—that is, the altruistic, moral, and rational desire for the general good—but this idea proved more naive than the optimism of the liberals, for in its application in the French Revolution and later in Marxist government, it has meant rather the will of one man or a small group. Insistence on absolute equality has in effect meant the destruction of human freedom.

In any case, the ideas of Hume and Rousseau had little effect upon American thought. Conditions in this country favored acceptance of optimism rather than skepticism, an emphasis on liberation rather than equality. An index of the rejection of equalitarian ideas was the negative reaction of Americans to the excesses of the French Revolution and particularly to the writing of Thomas Paine in defence of that movement. Though Paine had been a hero of the American Revolution, his association with rabid equalitarianism made him *persona non grata* even among many of the most rabid Jeffersonian democrats during the seventeen-nineties. As we have seen, American ideas of freedom were developed rather on the basis of concepts coming from Puritanism and the rationalism of the liberal philosophers of the seventeenth and eighteenth centuries. In the formulation of the American govern-

⁴³Leslie Stephen, *A History of English Thought in the Eighteenth Century* (London: Smith, Elder and Co., 1881), pp. 184-186.

⁴⁴J. J. Rousseau, *A Discourse upon the Origin and Foundation of Inequality Among Mankind* (London: R. and J. Dodsley, 1761), p. 119.

⁴⁵J. J. Rousseau, *The Social Contract* (London: The Oxford University Press, 1948), pp. 179, 180.

ment, the "founding fathers" certainly relied on divine guidance, but it was from "nature's God," who granted infinite capacity to human reason.⁴⁶ Freedom had been given to man as a natural right, and it was by human effort that it was to be preserved and propagated.

⁴⁶For a compilation of documents on the religious views of the "founding fathers," see Norman Cousins, ed., *'In God We Trust'* (New York: Harper and Brothers 1958).

RELIGIOUS CONSCIENCE IN COLONIAL NEW ENGLAND

ROBERT T. MILLER

Religious freedom, unlike so many other American liberties, is largely an indigenous product. It is not an inheritance transplanted from Europe by the founding fathers, but is rather the outcome of peculiarly American circumstances and problems and is the end result of a slow and oftentimes painful experience. It is perhaps not an overstatement to assert that religious liberty is "the great gift of America to civilization and to the world."¹

The Europe on which the colonists turned their backs did not believe even in religious toleration, much less in religious liberty. "Nowhere on earth prior to 1640, unless it were in Holland, was toleration in any effective form whatsoever anything more than the dream of a few persecuted sectaries or deep private thinkers."² For over a thousand years previous to the settlement of America the Old World had developed the concept of a close union of church and state which had become axiomatic. The church was the mentor of the state, and the state the protector of the church. The failure properly to appreciate the mutual importance and necessity could but end in civil disorder. The civil authorities legislated for the benefit of a system of church beliefs and established a particular church as the advocate of the only legally approved set of religious tenets. Uniformity, at least in the outward manifestation, was regarded as essential to national unity.

In order to enforce this uniformity, Europe of the sixteenth

¹Sanford H. Cobb, *The Rise of Religious Liberty in America* (New York: The Macmillan Company, 1902). This is perhaps the most thorough, widely cited, and helpful single work on the history of religious liberty in this country from the earliest colonial period to the first state constitutions adopted during and immediately after the Revolution. Other beneficial historical studies concerned either primarily or incidentally with the question are: Willam W. Sweet, *Religion in Colonial America* (New York: C. Scribner's Sons, 1942); James T. Adams, *The Founding of New England* (Boston: The Atlantic Monthly Press, 1921); Robert Baird, *Religion in America; or an Account of the Origin, Progress, Relation to the State, and Present Condition of the Evangelical Churches in the United States* (New York: Harper and Brothers, 1844); and Leon Whipple, *Our Ancient Liberties, The Story of the Origin and Meaning of Civil and Religious Liberty in the United States* (New York: The H. W. Wilson Company, 1927).

²David Masson, *The Life of Milton* (7 vols., London: Macmillan and Company, 1859-94), III, 108.

and seventeenth centuries was rent by both religious wars and religious persecution. Protestant dissenters were harassed in Catholic Spain and France, while Catholics received like treatment in Protestant countries. In England the particular group to be mistreated depended upon the religion of the sovereign in power at the time.

Religious persecution and the religious wars which swept France, Germany, and the Low Countries were of a particularly bloody nature because of the certainty of the persecutors and of those waging war that God was at their right hand. An outstanding church historian has commented: "Of all forms of persecution, religious persecution is the worst because it is enacted in the name of God. It violates the sacred rights of conscience, and it arouses the strongest passions."³

Lord Bryce, in lauding the United States upon the religious liberty and separation of church and state which he found present, wrote:

Of all the differences between the Old World and the New this is perhaps the most salient. Half the wars of Europe, half the internal troubles that have vexed European states, from the Monophysite controversies in the Roman Empire of the fifth century down to the Kulturkampf in the German Empire of the nineteenth, have arisen from theological differences or from rival claims of church and state.⁴

THE RELIGIOUS MOTIVE IN THE ENGLISH COLONIZATION OF AMERICA

The English colonization movement in North America was too complex to be attributed to any one motivating factor. Imperialism, economic and social pressures, humanitarianism, and the spirit of adventure played their part in varying degrees in the colonization effort. Too often in the early historical writings in this country these mundane elements were overlooked in stressing the spiritual urges presented by the desire either to escape the scourge of religious persecution or to respond to a missionary fervor to Christianize the natives. As a result of this undue emphasis on the religious motive for colonization, a reaction appeared which caused

³Philip Schaff, *History of the Christian Church* (3rd ed.; 7 vols.; New York: C. Scribner's Sons, 1882-1910), VII, 693.

⁴James Bryce, *The American Commonwealth* (3rd ed.; 2 vols.; New York: The Macmillan Company, 1904), II, 695.

certain later historians to tend to minimize religion as a driving factor.⁵

Recent writers strike a balance in their analyses. Recognizing the complexity of motives behind the colonization movements, they refuse to oversimplify the issue by undue emphasis on religion. While so doing, however, they are also unwilling to deny or delete the part played by religion, and they reserve for it an important role.

If there exists any doubt as to the importance of the religious motive, one has but to examine the documents of the day to understand the significance attached to this cause for colonization by those who actually journeyed toward the unknown wilderness. In practically every statement of purpose or plan drawn up and in every charter issued, as well as in the statements of those who participated in the migration to the New World, the missionary and religious purposes are obvious.

Though the settlement of Virginia and the other southern colonies is generally assumed to have been primarily prompted by economic considerations, the laymen who set the movement afoot and the clergy who encouraged it were deeply sensitive to the religious aspects. The first Charter for Virginia of 1606 emphasized the desire for:

Propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts to human Civility, and to a settled and quiet government.⁶

Likewise, in "A True and Sincere Declaration of the purposes and ends of the Plantation begun in Virginia" set forth by the Governors and Councilors for the Plantation on December 14, 1609, it is proclaimed that:

⁵For example, Henry K. Rowe wrote in 1924, "Religion had a part in the colonization of America, but it was not the dominant factor." *The History of Religion in the United States* (New York: The Macmillan Company, 1924), p. 8; James T. Adams, in *The Founding of New England*, *op. cit.*, advances and defends the thesis that even in theocratic Massachusetts, four out of five of the colonists had no sympathy for the Puritan Church but rather were primarily interested in adventure and economic advancement.

⁶Benjamin P. Poore, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (2 vols.; Washington: Government Printing Office, 1878), II, 1888.

The Principall and Maine Ends . . . we are first to preach, and baptize into Christian Religion, and by propogation of the Gospell, to recover out of the armes of the Divell, a number of poore and miserable soules, wrapt up into death, in almost invincible ignorance.⁷

Whatever private economic motives may have been present in the minds of the business men issuing these statements which sought to influence public opinion, it is significant that the religious arguments were placed first.

The Charter of New England granted in 1620 by James I to the Plymouth Company, after having noted that within "late Yeares there hath by God's Visitation raigned a wonderfull Plague, together with many horrible Slaughters, and Murthers" which had greatly reduced the native population of the area to be settled, continued:

and as We trust to His Glory, Wee may with Boldness goe on to the settling of soe hopeful a Work, which tendeth to the reducing and Conversion of such Savages as remaine wandering in Desolacion and Distress, to Civil Socitie and Christian Religion . . .⁸

The Charter of Rhode Island and Providence Plantations, granted belatedly by Charles II in 1663, stated the original purpose of those petitioning for the charter as follows:

. . . that they pursueing, with peaceable and loyall mindes, their sober, serious and religious intentions, of godlie edifieing themselves, and one another, in the holie Christian ffaith and worshipp as they were peswaded; together with the gaineing over and conversione of the poore ignorant Indian natives, in those partes of America, to the sincere professione and obedienc of same ffaith and worship . . .⁹

The first governor of the Massachusetts Bay Colony, John Winthrop, in his *Modell of Christian Charity*, which he wrote during the voyage from England, expressed the ideal of at least a large portion of the settlers. He emphasized that instead of attempting to found a colony for profit or for the glory of the English crown the voyagers were seeking a place where they could sojourn together under a "due forme of Government both civill and eccles-

⁷Alexander Brown, *The Genesis of the United States* (2 vols.; Boston: Houghton Mifflin and Company, 1890) I, 339.

⁸Poore, *op. cit.*, I, 922.

⁹*Ibid.*, II, 1596.

iaisticall" in order that they might attend to the "comforte and encrease of the body of Christe whereof we are members."¹⁰

In addition to the missionary spirit, a closely associated purpose drove thousands of men and women to the New World. These were they who sought for the sake of conscience and of conviction to worship God in their own way. Pilgrims, Puritans, Roman Catholics, Quakers, Huguenots, Moravians, Mennonites, and various other sects participated in the settlement of America. Each group was primarily interested in escape from a land, be it England, France, or Germany, in which they could not practice their religious tenets because of opposition or actual persecution.

The Pilgrims first left England and sought refuge from the persecution of James I in Leyden, Holland, from which city they migrated to America in 1620. The Puritans departed from England ten years later to establish a City of God in the wilderness, avowing their love for the "dear mother Church" but regarding themselves as having been subjected to penalty and persecution because of their objections to certain harmful and unscriptural exactions in its discipline and ceremony to which they could not subscribe. Pennsylvania and Delaware were instituted by William Penn chiefly as havens for the Quakers. The Roman Catholic Lord Baltimore desired Maryland as a refuge for his co-religionists. Many French Huguenots migrated to South Carolina. Members of German Pietist sects such as the Moravians came to various parts of America because of opposition to their religious practices in the homeland. Thus the memory of religious persecution was vivid in the minds of many of the colonists who made the long voyage to America.

RELIGIOUS INTOLERANCE TRANSLATED FROM OLD TO NEW ENGLAND

It is a mistake, however, to assume that all of these early settlers so vitally interested in the advancement of religion believed in freedom of religion. The phrase "liberty of conscience" which was frequently used by the founding fathers did not mean then what it means today. Those who claimed and sought religious freedom for themselves all too often did not perceive that others of unlike beliefs were also entitled to that same liberty.

One of the paradoxes of early American colonial history was the extreme intolerance of many of those, particularly the set-

¹⁰*Collections of the Massachusetts Historical Society* (79 vols.; Cambridge: The Society 1792-1941), VII, 33.

tlers of New England, who had only recently fled to this country to escape persecution. Freedom of religion meant freedom only for their own peculiar concepts and practices. Theirs was the true and only "Way," and they were not concerned with the consciences of those who disagreed. Those who dissented must remain quiet or withdraw. "It is strange indeed," says John C. Ridpath, the historian,

that the very men who had so recently, through perils by sea and land, escaped with only their lives to find religious freedom in another continent, should have begun their career with intolerance and persecution. The only excuse that can be found for the gross inconsistency and injustice . . . is that bigotry was the vice of the age rather than of the Puritans.¹¹

The sermons and general writings of the founding fathers make it clear that, far from being the champions of toleration, they opposed it bitterly. "'Tis Satan's policy, to plead for an indefinite and boundless toleration," said Thomas Shepard.¹² As late as 1673, Uriah Oakes, President of Harvard, denounced religious freedom as the "first-born of all Abominations," while Increase Mather struck out at the "hideous clamours for liberty of Conscience."¹³ In 1677, Mather declared, "I believe that antichrist hath not at this day a more probable way to advance his kingdom of darkness, than by a toleration of all religions and persuasions."¹⁴

Perhaps the most widely quoted statement regarding the opinion of the New England Puritans toward their non-conforming brethren is found in a 1645 pamphlet by Nathaniel Ward in which he wrote :

I dare take it upon me, to bee the Herauld of *New-England* so farre, as to proclaime to the world, in the name of our Colony, that all Familists, Antinomians, Anabaptists, and other Enthusiasts, shall have free Liberty to keep away from

¹¹John C. Ridpath, *A Popular History of the United States of America, from the Aboriginal Times to the Present Day* (Cincinnati: Jones Brothers and Company, 1877), p. 128.

¹²Lindsay Swift, "The Massachusetts Election Sermons," *Colonial Society of Massachusetts, Publications*, 1, 400, as cited in Thomas J. Wertenbaker, *The First Americans, 1607-1690* (New York: The Macmillan Co., 1927), p. 91.

¹³*Ibid.*

¹⁴*Sermons*, p. 106, as cited in Isaac Backus, *Church History of New England from 1620 to 1804* (Philadelphia: American Baptist Society, 1853), p. 119.

us, and such as will come to be gone as fast as they can, the sooner the better.

Secondly, I dare averre, that God doth no where in his world tolerate Christian States, to give Tolerations to such adversaries of his Truth, if they have power in their hands to suppress them.¹⁵

That these were not simply idle expressions of opinion is evidenced by the many laws passed and the acts of intolerance and persecution which dot the early records of virtually every colony. Ironical as it may seem, the mother country on several occasions found it necessary to admonish the colonial governments for their illiberal actions. In 1679, Charles II wrote to the governor of Massachusetts criticizing that government for the persecution of those who did "not agree in the Congregational way." In 1651, Sir Richard Saltonstall wrote to John Cotton and John Wilson, leaders of the Massachusetts Puritans, in the same vein:

It doth not a little grieve my spirit what sadd things are reported dayly of your tyranny and persecution in New England. . . . These rigid wayse have layd you very lowe in the hearts of the saynts. I doe assure I have heard them pray in the publique assemblies that the Lord would give you meeke and humble spirits, not to stryve soe much for uniformity as to keepe the unity of the Spirit in the bond of peace.¹⁶

NEW WORLD ESTABLISHMENTS—MASSACHUSETTS BAY

The leaders of the Massachusetts Bay Colony were Church of England men who made it clear from the outset that they did not separate from the Church of England, nor from the ordinances of God, but only from the corruptions and disorders of that Church: that they came away from the Common-Prayer and Ceremonies.¹⁷ They had no basic objection to a state church. They were intent on perpetuating their own tenets and their form of worship, and in order to do so they established a Puritan state-church, Congregationalism, which gradually took the place of the Anglican state-church to which they were accustomed in England.

¹⁵Nathaniel Ward, *The Simple Cobbler of Aggawam in America*, (Boston: James Munroe and Company, 1843), p. 3.

¹⁶Isaac Backus, *A Church History of New England* (3 vols.; Boston: Edward Draper, 1777), I, 246.

¹⁷Cotton Mather, *Magnalia Christi Americana: or the Ecclesiastical History of New England from its first planting in the year 1620 into the year of our Lord, 1698* (London: T. Parkhurst, 1702), Book I, 13.

Having established their Bible Commonwealth, they were fully prepared to further it and protect it from invocation by the authority of the civil law. They expected the state to support public worship and suppress heresy.¹⁸ The theocratic state had its chief interest centered in the church, and there always existed the closest possible degree of co-operation between the officials of the community and the ministers of the church. Not only the religious interests, but the social and political life as well centered around the church. The ministers, who were regarded as "chosen men of God," were also leaders in public affairs and their opinions carried great weight though they might hold no public office.

Theocracy was the form of government recommended in Holy Writ; democracy was government unfit for pious men. "Democracy, I do not conceyve that ever God did ordeyn as a fitt government eyther for church or commonwealth," said the Reverend John Cotton of Boston. "If the people be governors who shall be governed? As for monarchy, and aristocracy, they are both of them clearly approved, and directed in scripture . . . and setteth up Theocracy . . . as the best forme of government in the commonwealth, as well as in the church."¹⁹

Governor Winthrop agreed wholeheartedly as to the lack of scriptural warrant for democracy, "the meanest and worst of all forms of government." He held that power should be kept "in the hands of those whose Christian calling is to govern and that their number should remain as small as possible."²⁰ The franchise

¹⁸Although it is customary to refer to the Puritan colonies, and especially to Massachusetts, as theocracies, the aptness of the term has been challenged by various authorities in the field. Charles M. Andrews, for example, says that "Massachusetts was not a theocracy, as it has too often been called, for the influence of the clergy was entirely unofficial and without the sanction of law." *The Colonial Period of American History* (4 vols.; New Haven: Yale University Press, 1934-38), I, 448. Other historians have made the same point, but commenting upon this distinction, Ernest S. Bates says, "This argument seems to the present writer a legalistic splitting of hairs." *American Faith: Its Religious, Political and Economic Foundations* (New York: W. W. Norton and Co., 1940), p. 124. Andrews, himself agrees that "there are times when, in some respects, the functions of church and state would seem to have been interchangeable." Andrews, *op. cit.*, p. 450.

¹⁹Thomas Hutchinson, *The History of the Colony and Province of Massachusetts-Bay* (3 vols.; Cambridge: Harvard University Press, 1936) I, 415. Cotton Mather, *Magnalia Christi, op. cit.*, Book III, 21, states the opinion of the Reverend John Cotton in this fashion: "Mr. Cotton effectually recommended it unto them, that none should be Electors, nor Elected therein, except such as were visible subjects of our Lord Jesus Christ, personally confederated in our Churches. In these, and many other ways, he propounded unto them, an Endeavour after a Theocracy, as near as might be, to that which was the Glory of Israel, the peculiar People."

²⁰*Collections of the Mass. Hist. Soc., op. cit.*, "Winthrop Papers," I, 5.

was soon limited to church membership in 1631,

to the end that the body of the comons may be pserved of honest & good men, it was likewise ordered and agreed that for time to come noe man shalbe admitted to the freedome of this body polliticke, but such as are members of some of the churches within the lymitts of the same.²¹

A resident of the colony, whether a citizen or not, was under obligation to support both the state and the church. In 1638 the General Court declared:

Every inhabitant of any towne is lyable to contribute to all charges, both in church & comon welth, whereof hee doth or may receive benefit; & withall it is also ordered, that every such inhabitant who shall not volentarily contribute, pportionably to his ability, wth other freemen of the same towne, to all comon charges, as well for upholding the ordinances in the churches as otherwise shalbe compelled thereto by assessment & distress to bee levied by the cunstable, or other officer of the towne.²²

The inhabitants were also required to attend preaching on the Sabbath, and absence from church without legitimate cause rendered the offender liable to a fine of five shillings. In 1658 the General Court was given power as to the ordination or continued ministries of any preacher, since it was declared to be the "duty of the Christian magistrate to take care the people be fed with wholesome & sound doctrine"²³ State control was made complete in 1679 when the building of meeting-houses was prohibited without permission from the freemen of the town or the General Court.

The Word of God and the ministers of the Word alike were to be free from criticism or contempt, and punishment for such

²¹Nathaniel B. Shurtleff, ed., *Records of the Governor and Company of the Massachusetts Bay in New England* (5 vols.; Boston: William White, 1853-54), I, 87.

²²*Ibid.*, I, 240-241.

²³*Ibid.*, IV, Part 1, 328. In order to see that the law concerning church attendance was enforced as well as to preserve order and guarantee attention within the meeting place, the quaint office of tithingman was created. In 1644, for example, in Salem two men were "appointed every Lord's day to walke forth in the time of God's worshippe, to take notice of such as either lye about the meeting-howse without attending to the word or ordinances, or that lye at home or in the fields, w'thout giving good account thereof, and to take the names of such persons & to present them to the Magistrate, whereby they may be accordinglie proceeded against." Town Records of Salem, 131, Part 1, 1634-1659, published in the *Historical Collections of the Essex Institute* (35 vols.; Salem, Mass.: Published for the Essex Institute, 1859-1919), Second Series, Vol. I.

contempt for a second offender was either to pay a fine of five pounds or to "stand two hours openly upon a block 4 foote high, on a lecture day, with a pap fixed on his breast, wth this, A WANTON GOSPELLER, written in capitall letters, yt othrs may fear & be ashamed of breaking out into the like wickedness."²⁴ There was no place for heretics and blasphemers. In addition to fines for numerous types of "heresy," the law set forth the fate of the blasphemer as death.

Although there were undoubtedly those who failed to comply with the many religious laws and who yet escaped any official punishment, that the civil authorities were not lax in their punishment of reported breaches is evidenced by the many notations in the records of the day. One Hugh Buet, being found guilty of "heresy," was ordered to leave the colony within three weeks or be hanged. Two others were imprisoned for criticizing the clergy; and for a like offense, Katherine Finch was condemned to be whipped.

With the clergy and the magistracy in agreement as to the religious doctrine and discipline, no small amount of courage was required to stand up against them openly. Fine, imprisonment, or banishment would surely follow. As a result, most dissidents outwardly complied though privately rebelling against the system. However, from time to time there appeared on the scene stubborn "troublers of Israel" who refused to be silent. Perhaps the most famous instance of dissent and discipline was the Antinomian controversy in the years 1636-1638. This struggle within the church resulted in the sentencing and banishment of a number of those who openly refused to conform and who spoke out against certain practices of the established Congregational Church which were deemed essential to salvation. The best known figures to be purged from the colony at this time were Roger Williams, Mrs. Anne Hutchinson, and the Reverend John Wheelwright.²⁵

If little sympathy were shown to protesting members of the recognized church, even less could be expected by members of other religious faiths. For those outside the confines of the estab-

²⁴Act of November 4, 1646, *Records of Massachusetts, op. cit.*, II, 179.

²⁵The literature on the Antinomian controversy is extensive. The classic account is that of Charles F. Adams, *Three Episodes in Massachusetts History* (2 vols.: Boston: Houghton Mifflin and Company, 1893), I, 363-532; II, 533-578. See also the work edited by the same author, *Antinomianism in the Colony of Massachusetts Bay, 1636-1638* (Boston: The Prince Society, 1894).

lished churches who dared disturb the religious peace of the community, an even more arbitrary and cruel treatment was prescribed. Roman Catholics were not allowed to live in the colony, and in 1647 Jesuits were forbidden to enter under penalty of banishment for the first offense, and death if they returned. Few if any accounts of Catholic persecution exist, but only because the Catholics did not attempt to enter.

Baptists and Quakers bore the brunt of the persecutions. In 1644 the General Court ordered the banishment of all Anabaptists,²⁶ and persecutions were numerous. The most notable case occurred in 1651 near Lynn when John Clarke and Obadiah Holmes were arrested while holding a meeting in a friend's home, haled before the court, and sentenced to pay a fine or, in default, to be whipped. Clarke's fine was paid for him, but Holmes was "whipped unmercifully" on the streets of Boston.²⁷

The treatment of the Quakers was even harsher. Ship captains were forbidden under penalty of fine to bring them to the colony. Persons found in a Quaker meeting were to be imprisoned for three days on bread and water, and in October, 1647, the General Court provided:

If any Quaker or Quakers shall presume, after they have once suffered whate the lawe requireth, to come into this jurisdiction every such male Quaker shall for the first offence have one of his eares cutt off, and be kept at worke in the howse of correction till he cann be sent away at his own charge, and for the second offence shall have his other eare cutt off . . . and every woman Quaker . . . shall be severely whipt, and kept at the howse of correction at worke till she shall be sent away . . . and for every Quaker, he or she, that shall a third time herein againe offend, they shall have their tongues bored through with a hot iron . . .²⁸

²⁶James K. Hosmer, ed., *Records of Massachusetts*, *op. cit.*, II; John Winthrop, *Winthrop's Journal, History of New England, 1630-1649*, (2 vols.; New York: C. Scribner's Sons, 1900), II, 177.

²⁷Backus, *A Church History of New England*, *op. cit.*, I, 207-272, gives a detailed account of this instance and many other illustrations of persecution and discrimination against the Baptists. President Dunster of Harvard was forced to resign his position because he refused to allow his child to be baptized. Stephen Winthrop, while serving in Cromwell's army, wrote his father in 1645 that "here is great complaine agt us for or severetye agt Aanabaptists." *Collections of the Mass. Hist. Soc.*, *op. cit.*, Series 5, VIII, 200.

²⁸*Records of Massachusetts*, *op. cit.*, IV, Part I, 308, 345-346, 349, 367, 383. The trials and tribulations of the mistreated Quakers are chronicled in Rufus M. Jones, *The Quakers in the American Colonies* (London: The Macmillan Company, 1911).

If all these measures failed, the persistent Quakers were to be put to death. Under these severe enactments, Marmaduke Stevenson, William Robinson, William Leddra, and one woman, Mary Dyer, were hanged. Several were mutilated or branded; at least two are known to have died from starvation and whipping, and several hundred were imprisoned.

The most disgraceful episode of all, perhaps, was that of the witchcraft craze which sprang up and passed almost in the span of the year 1692. During this brief period the jails were filled with unfortunates, usually old women, accused of witchcraft. Twenty-two of these victims were condemned in a Salem court; two died while in jail; and nineteen were hanged. It should be said to their honor that the men of Massachusetts soon repented of this shameful work. The twelve jurors in the case published a declaration of sorrow, and Samuel Sewall made public confession of his sense of guilt in South Church in 1697, "asking pardon of men, And especially desiring prayers that God . . . would pardon that sin and all others of his sins" ²⁹ The general revulsion and penance arising from the witchcraft incidents undoubtedly had a most desirable ultimate effect as they hastened the removal of the theocratic hold upon the colony. Barrett Wendell, in his account of the life of Cotton Mather, in commenting upon the effect, says, "It was the great tragedy of witchcraft, I think, that finally broke the power of theocracy." ³⁰

OTHER NEW ENGLAND ESTABLISHMENTS

The punishment of dissenters was never as prominent in the other Congregational colonies as in Massachusetts. A more liberal policy prevailed in Plymouth, though its records are not without blemish. As early as 1645 a majority of the House of Delegates was in favor of a resolution for a "full and free toleration of religion to all men," without "exception against Turk, Jew, Papist, Arian, Socinian, Familist, or any other," but the governor

²⁹Samuel Sewall, *Diary*, I, 445, as found in *Collections of the Mass. Hist. Society*, Vols. V and VI. Many accounts of the witchcraft delusion have been recorded, and perhaps it has been exaggerated beyond its true scope. The most lengthy account on the general subject of "witchcraft" is George L. Kittredge, *Witchcraft in Old and New England* (Cambridge: Harvard University Press, 1929).

³⁰Barrett Wendell, *Cotton Mather, the Puritan Priest* (Cambridge: Harvard University Press, 1926), p. 88.

would not put the question to a vote, so it failed to become law.³¹ In 1650, to protect the established church, it was forbidden to organize any churches or public meetings diverse from those already set up, without approval of the government; and in 1651 church attendance was encouraged by a ten shilling penalty for those neglecting such attendance. At first, the ministers were maintained by voluntary contributions, but in 1657 taxes were levied in each township for the support of "an able Godly Teaching Minister which is approved by this Government."³² The records of the Court of the colony show that the collection of these ministerial fees was strictly enforced. Plymouth also joined in the hue and cry against the Quakers by legislation in 1657 and 1658. Quaker literature was banned, their meetings were prohibited, and their presence was to be followed by fine, imprisonment, and banishment; but they were not made subject to death or injury to life or limb.

The founding of Connecticut, under the leadership of Thomas Hooker, was in large degree a protest against the theocracy of Massachusetts. Yet, the Fundamental Orders of Connecticut drawn up in 1639 was a thoroughly Puritan document in that its declared purpose was not only to establish "an orderly and decent Government," but also to "mayntayne and prseave the liberty and purity of the gospell of our Lord Jesus wch we now prfesse, as also the disciplyne of the Churches"³³ There was no formal church membership qualification for the suffrage, but the governor was required to be a member of some "approved congregation." In 1717 an act provided for the election of the town minister by the voters and the town was authorized to levy taxes for his support. Connecticut enacted legislation against the Quakers in 1657 and 1658, but the laws were far less harshly applied than in the Massachusetts Bay colony.³⁴

The short-lived New Haven colony undertook to establish a theocracy even more strict than that of Massachusetts. The entire

³¹George Bancroft, *History of the United States, From the Discovery of the American Continent* (6 vols.; New York: D. Appleton and Company, 1891-1892). I, 214.

³²*Records of the Colony of New Plymouth in New England* (12 vols.; Boston: William White, 1855-1861), XI, 67.

³³Poore, *op. cit.*, I, 249.

³⁴Cobb, *op. cit.*, p. 261, states that there was no persecution under these acts. Paul E. Lauer, "Church and State in New England," *John Hopkins University Studies*, X, Nos. 2, 3, Baltimore: 1892, 136, says simply, "They were imprisoned until they could be sent out of the colony." Lauer's work presents a fine study of the colonial church-state situation in the New England Colonies.

organization was religious. The "seven pillars" of the New Haven Church were the magistrates of the town and they also chose the colonial governor. They also served as judges, and disposed of trial by jury because no authority could be found for it in the laws of Moses. None but church members could vote, the churches were supported by taxes, and church absence was punishable by fine. Although the famous "Blue Laws" of New Haven, published in 1781 by the Reverend Samuel Peters of London, were no more than figments of the satirical imagination of that worthy, the fictitious laws did not much exceed in severity the actual laws of the colony.³⁵ The rumor of Quakers awoke the usual frenzy in New Haven, and in 1658 an elaborate act against that group was passed. Both the Quakers and their writings were prohibited. Though the death penalty was not provided, hard labor, branding and banishment were all included as punishments for those holders of diabolical doctrines.

New Hampshire, as did Rhode Island and Connecticut, owed its origin in large part to the intolerance of the Bay Colony. John Wheelwright, upon his banishment from that commonwealth in 1638, departed with a number of friends for the Piscataqua. They were joined later in the year by others; and in 1639 the three settlements of Exeter, Hampton, and Dover associated themselves in an "Agreement" in which the religious foundation of the colony was evident, but which failed to provide for a theocratic system. The franchise was not dependent upon a profession of religious faith. However, the church was established and tithes were assessed and collected under the civil law.

From 1641 to 1679 New Hampshire was under the control of Massachusetts and hence under its laws. However, in the latter year this union was dissolved by royal order, and the instructions to the commissioners commanded that "liberty of conscience shall be allowed unto all protestants" although those conforming to the rites of the Church of England were to be "particularly

³⁵For an account of these forgeries of Peters as well as the actual blue laws, see J. Hammond Trumbull, *The True-Blue Laws of Connecticut and New Haven and the False Blue-Laws Invented by Rev. Samuel Peters* (Hartford: American Publishing Company, 1876). A very readable account of the various Sunday observance laws throughout New England is found in Alice M. Earle, *The Sabbath in Puritan New England* (New York: Charles Scribner's Sons, 1892).

countenanced and encouraged.”³⁶ Governor Cranfield, who arrived in 1682, even in the face of these instructions attempted to force the Church of England on the colony, but after a flurry of harassment of Congregational ministers for refusal to conform, the governor was recalled and no further effort was made to convert the churches to Episcopacy.

AN EXPERIMENT IN LIBERTY

The shining exception to the general New England pattern of religious intolerance and establishment was the little colony of Rhode Island. In point of religious liberty, Rhode Island unquestionably holds the foremost rank among the colonies. It never had an established church, and from the beginning it was free from the taint of religious persecution. Driven out of Massachusetts in 1636 because of his denial of the jurisdiction of the State over the consciences of men, the factious but fearless Roger Williams established a settlement at Providence. There, joined by exiles and dissenters from the other colonies, he put into operation the principles of religious and civil liberty for which he had contended in vain in the Bay Colony. Rhode Island was raised up as a standing, conscious protest against the religious intolerance of the day, and dedicated “to hold forth a livlie experiment, that a most flourishing civill state may stand and best bee maintained . . . with a full libertie of religious concernements.”³⁷

In his best known work, Williams propounded his ideas respecting religious freedom and complete separation of church and state, after having tested them empirically for eight years. They represented a belief advanced beyond the times and clearly foreshadowed the doctrines of a much later American age. They are milestones of religious liberty worthy of repetition:

All civil states, with their officers of justice, in their respective constitutions and administrations are proved essentially civil, and therefore not judges, governors, or defenders of the spiritual or Christian state and worship.

It is the will and command of God that (since the coming of his Son the Lord Jesus) a permission of the most Paganish, Jewish, Turkish, or anti-christian consciences and worships be granted to all men in all nations and countries:

³⁶Nathaniel Boutan, *et al.*, eds., *Provincial and State Papers of New Hampshire* (33 vols.; Concord: 1867-1915), I, 378.

³⁷The Charter of Rhode Island and Providence Plantations, 1663, Poore, *op. cit.*, II, 1596.

and they are only to be fought against with that sword which is only (in soul matters) able to conquer: to wit, the sword of God's Spirit, the word of God.

. . . God requireth not an uniformity of religion to be enacted and enforced in any civil state; which enforced uniformity (sooner or later) is the greatest occasion of civil war, ravishing of conscience, persecution of Christ Jesus in his servants, and of the hypocrisy and destruction of million of souls.

. . . An enforced uniformity of religion throughout a nation or civil state, confounds the civil and religious, denies the principles of Christianity and civility, and that Jesus Christ is come in the flesh.³⁸

Rhode Island's practices were consistent with her founder's theories. In a "Plantation Agreement" at Providence in 1640 it was agreed "as formerly hath bin the liberties of the town, so still, to hould forth liberty of Conscience."³⁹ In 1641, the General Court of Election ordered further that "none bee accounted a Delinquent for *Doctrine*: Provided, it be not directly repugnant to ye Government or Lawes established." The same body elaborated in its 1647 acts by decreeing:

All men may walk as their consciences perswade them, every one in the name of his God. And lett the Saints of the Most High walk in this Colonie without Molestation in the name of Jehovah, their God for Ever and Ever . . .⁴⁰

From the spirit of these liberal pronouncements Rhode Island never varied. In 1663 a charter was issued by the king which recognized and further guaranteed religious liberty. No Sabbath-observance legislation was enacted, and though the offense of witchcraft appears on the statute books, no prosecutions were ever had under the witchcraft law. To the great consternation of neighboring colonies, Quakers were admitted to Rhode Island although

³⁸Roger Williams, "The Bloody Tenent, of Persecution, for cause of Conscience, discussed, in A conference betweene Truth and Peace" (1664) in Samuel L. Caldwell, ed., *Publications of the Narragansett Club* (First Series, Providence, 1867), III, 3-4. Two competent biographies of Williams in which his ideas concerning religious liberty are carefully discussed are: James E. Ernst, *Roger Williams, New England Firebrand* (New York: The Macmillan Company, 1932), and Samuel H. Brockunier, *The Irrepressible Democrat, Roger Williams* (New York: The Ronald Press Company, 1940).

³⁹John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England*, (10 vols.; Providence: 1856-1865), I, 28.

⁴⁰*Ibid.*, pp. 113, 190.

their doctrines and activities were personally objectionable to the founder. When a bill of outlawry of Quakers was proposed in 1665, the people protested to such a degree that it failed of enactment. The only doubtful laws ever to mar the Rhode Island statutes appeared about the beginning of the eighteenth century. These acts seem to have denied the full right of citizenship to Catholics and Jews. However, the authenticity of the law concerning the Catholics has been generally questioned by historians, and both Catholics and Jews at later dates freely settled in Rhode Island, and members of both faiths were on numerous occasions granted citizenship upon application to the Assembly.⁴¹ The record of Rhode Island with respect to religious liberty was a unique and happy one on the colonial stage and subsequent generations are heavily indebted to the convictions and tenacity of its founder, Roger Williams.

RELIGIOUS LIBERTY AND DISESTABLISHMENT

At the end of the seventeenth century the old Puritan order was still firmly entrenched in the New England colonies, but the handwriting was on the wall. Except in Rhode Island, the Congregational Church was still supported by public taxes paid by dissenters as well as communicants. However, after Charles II had felt called upon to rebuke the Massachusetts authorities for their persecutions and high-handed methods, and after their charter had been revoked in 1685, the new charter of 1691, which united Plymouth and Massachusetts Bay, granted "liberty of conscience to all Christians, except Papists." The church membership qualification was superseded by property qualification. Persecutions of Baptists and Quakers gradually died out, and in 1729 an act was passed exempting these two groups from taxation for the support of ministers.⁴² Other extenuating acts were passed in the years that followed, but it was not until 1818 that Connecticut in its new constitution completely destroyed the establishment. The church died even harder in Massachusetts, in which the year 1833

⁴¹Samuel G. Arnold, *History of the State of Rhode Island and Providence Plantations* (2 vols.; New York: D. Appleton and Company, 1859-1860), I, 493; Lauer, *op. cit.*, p. 175. *The Records of Rhode Island, op. cit.*, conclude, (II, 36-37), that "It cannot, therefore, be believed that any sect was excluded from their civil rights for their religious opinions." In 1738 the Rhode Island Assembly took note of the "interpolations" by extending all rights to Catholics. *Ibid.*, IX, 674-675.

⁴²The Baptists, in order to secure exemption, were required to furnish certificates signed by "two principal members of that persuasion." A complete account of the final struggle for religious liberty and disestablishment in New England is found in Joseph F. Thorning, *Religious Liberty in Transition* (Washington, D. C.: The Catholic University of America, 1931).

finally saw its disestablishment. In New Hampshire separate legislative acts of 1792, 1804, 1805, and 1817 gave exemptions to Episcopalians, Baptists, Universalists, and Methodists. In 1819 an act gave freedom to all Christian sects. As usual, the spirit of the times was ahead of the laws, and state persecution for religious conscience's sake had ceased to plague New England long before the enactment of these formal liberalizing statutes.

It is difficult to judge the leaders of New England with any degree of fairness. By our standards, their concepts of the proper relationship of church and state, with some notable exceptions, were most oppressive, unreasonable, and unwise. Their extreme intolerance in word and deed is most unworthy of their many unquestioned Christian virtues. Nonetheless, the harshness of our judgment must be tempered by the knowledge of the character of the times in which they lived. They were intolerant men. However, they were, after all, but products of their age, and just as they largely transferred their social and political customs to the new land, so they sought to transplant the Old-World patterns of church-state relations and intolerance to the New. The transplantation flourished in the new soil for too long a time; but long before Europe had shaken loose her shackles of coerced religious conformity, the development of a fresh and more wholesome conscience brought forth by the end of the colonial period a wider freedom of religion, even in reluctant New England, than had been achieved anywhere in the Old World.

THE MEANING OF SEPARATION OF CHURCH AND STATE IN THE FIRST AMENDMENT

JOSEPH M. DAWSON

The First Amendment to the Constitution of the United States, which heads the Bill of Rights, stipulates: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The question that is immediately asked, however, is what exactly does this provision mean? In the light of history, one is compelled to acknowledge that it has been construed in many different ways. We should, therefore, avail ourselves of every serious answer made in order to arrive at the true interpretation of this provision in the Constitution. The Constitution could be changed by false interpretation.

Most authorities agree that the First Amendment stands primarily as a bulwark for religious liberty for all men. That is to say, freedom of conscience is beyond the control of any civil authority. This means far more than toleration, which may be a mere concession for the time. This concession, denominated toleration, as a celebrated scholar says, "is negative, liberty positive; toleration is a favor, liberty a right; toleration may be withdrawn by the power which grants it, liberty is as inalienable as conscience itself; toleration is extended to what cannot be helped, and what may be in itself objectionable; liberty is a priceless gift of the Creator."¹

Roger Williams, with whom the principle of separation of church and state originated in America, founded his colony of Rhode Island with the express provision that the government of the colony should be concerned "only in civil things." One biographer of Williams says: "Roger Williams made the basis of his Providence experiment two interpretative principles peculiarly his own, the absolute freedom of conscience from civil control . . . and the civil rights and privileges due him as a man, a subject and a citizen." In another place he says: "He (Roger Williams) had wielded diverse elements into a modern civil society based on a social compact or written constitution, granting religious liberty

¹Phillip Schaff, *History of the Christian Church* (7 vols.; New York: Charles Scribner's Sons, 1882-1910), V, 81.

and liberty of conscience, writing, printing, speech, debate, dispute, and association, and incorporating the principles of separation of church and state, people's sovereignty and the rights of man."²

It is true that the phrase "separation of church and state" does not appear in the Constitution, but neither does "religious liberty" nor "Bill of Rights." However, these designations are convenient and are fully warranted because they are succinct and descriptive terms.

The language of the First Amendment, long pondered and repeatedly revised before final adoption, should be carefully noted. Not a few have contended that whereas its precise meaning is that Congress shall not be allowed to establish a single church, the Amendment in no way prohibits governmental recognition and support of all churches. Yet the word *church* is not used in this first guaranty in our Bill of Rights. The word *religion* is used instead. The author explains this choice of wording as follows:

So long as the state had any remaining right to sit in judgment upon the claims of any religious faith or to tax persons for the support of any religious teaching in which they did not believe, there could be no equal rights of conscience . . . When Americans realized that all forms of establishment were hostile to equality, they formulated the conception of church and state in the Revolutionary and early National period.³

The idea that the state might establish religion by giving what is termed non-preferential aid to all the churches came up at once in the proposal to allot tax funds equally to all religion teachers. This idea was strongly advocated in Virginia. Even Patrick Henry advocated it. But Washington, Jefferson, and others of the founding fathers perceived that this violated the very essence of the amendment. It was James Madison, "Father of the Constitution," who came forward with an immortal paper which defeated the proposition. This was his *Memorial and Remonstrance Against Religious Assessments*, one of his greatest pronouncements.

Notwithstanding the decisive rejection of the attempt, Roman Catholics and some Protestants in recent years have revived this argument. At this moment it is being more earnestly urged than

²James Ernst, *Roger Williams* (New York: The Macmillan Company, 1932), p. 220.

³R. Freeman Butts, *The American Tradition in Religion and Education* (Boston: Beacon Press, 1950), p. 37.

ever before as ground for entitling parochial schools to receive in equal amounts grants for scientific studies the same as are accorded institutions fostered by the state.

The *Everson* case was decided by the United States Supreme Court in 1947 by a vote of five to four. The majority opinion was written by Justice Hugo Black and the minority dissenting opinion was written by Justice Wiley B. Rutledge. Both justices agreed that there are two great questions persisting in the process of keeping church and state as required by the First Amendment. Justice Black for the majority expressed this conclusion :

In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect.

Justice Rutledge, dissenting, said in even clearer terms :

Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, is to obtain public funds for the aid and support of various private religious schools.

Justice Black further declared : "The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom to separate religions and governments (in harmony for the most part with the Federal Constitution)."

What the Constitution of the United States forbids and what the constitutions of all the states forbid, although in different forms of expression, is the making of any law or the action of any governmental authority in pursuance of any law that involves the interlocking of the official functions of the state (or any of its agencies) with the official or institutional functions of any church.

When a given state acting through its legislature invites or employs a religious leader to deliver an invocation at the opening of sessions of the legislature, it is dealing solely with an individual qualified to perform the services asked for ; it is not making any contract, agreement, or arrangement with any specific religious group, whether Catholic, Protestant, or Jewish ; it is not giving

a vote or a veto to any religious institution; it is not giving sanction by such participation to any group, organization, or association of church bodies, whether national, state, or local.

When the officials in charge of the activities of the armed forces select ministers, priests, and rabbis to act as chaplains, they are not making any agreement with their respective religious organizations or group of organizations.

Also when the state exempts from taxation all property used for charitable, cultural, or religious purposes, it is not participating in the official functions of these institutions; neither is it giving anyone outside the government a voice in the affairs of government. No organized Catholic, Protestant, or Jewish institution is thereby given a voice in the affairs of government. Some individuals even go so far as to say that the absolute separation of church and state might in some way prevent our putting the words "In God We Trust" on the coins and notes of the United States Treasury.

Many Americans contend that church-state separation has proved best for the state and best for the church. They approve of the words Thomas Jefferson addressed to the Danbury, Connecticut, Baptist Association in 1802: "I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church and State."

There is still a determined effort to breach that wall. This effort takes many forms. Some, such as free buses to parochial schools, have been termed "fringe aids"; others, such as large grants to church hospitals, are more consequential. All either erode or crack the wall.

There are not only those who, like termites, work in subtle ways to undermine our Constitution, but there are also those who openly try to subvert it. They diligently seek to set aside the traditional, historical interpretation of the Constitution and to substitute instead the European concept of church-state relations. This they do in an effort to procure special favors and tax funds from the government for the purpose of strengthening their sectarian institutions. If they succeed in their purpose, they will sound the death knell of religious liberty in the United States.

Some ask nonchalantly: What of these attacks? They may even ridicule endeavors to cling to the Constitution. Such people,

if they believe in church-state separation at all, believe that the principle applies only now and then, here and there. If they would stop and think, they would realize that they argue with America's finest patriots. From George Washington to the present many of our best statesmen have shown how urgently important it is to preserve our Constitution in its integrity. Listen to James Madison in his famous *Memorial and Remonstrance*:

It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences by denying the principle. We revered this lesson much too soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish, with the same ease, any particular sect of Christians, in exclusion of all other sects?

Madison's biographer, Irving Brant, says the First Amendment "was Madison's further answer, in behalf of all American people, to every attempt, no matter how small or innocent it might seem to be, to establish religion by financial or any other means."⁴

It is a curious fact, but true nevertheless, that from the first there have been those who zealously seek to insert religion in the Constitution by having the Constitution declare expressly for the Christian religion. This movement grew vocal in connection with the Girard College case. Again in 1863 it became rather impressive when representatives of eleven Christian denominations met in Zenia, Ohio, and demanded that Christianity be made the official religion of the United States. *The Christian Statesman* was started in 1867 and a lobby was instituted in Washington for that purpose. There exists to this day an organized group beseiging Congress to do what the Constitution forbids it ever to do, namely, establish religion. Failure to establish religion signifies neither hostility nor neutrality. Those who complain bitterly over the secularization of the state seem never to have realized that it is properly secular in the sense that it is not under church control.

In 1872, the Supreme Court of Ohio, with Judge Welch presiding, handed down a decision which reads: "Religion is not—

⁴Irving Brant, *James Madison: The Nationalist, 1780-1787* (New York: The Bobbs-Merrill Company, 1948), p. 355.

much less Christianity or any system of religion—named in the preamble of the Constitution as one of the declared objects of government; nor is it mentioned in our Constitution as being essential to anything beyond mere human government.”⁵ As argued by Roger Williams in the beginning, the functions and objectives of religion and state differ. Madison even insisted that religion, which is voluntary, needs neither police power nor taxes to advance it. Moreover, he said that the national government has no “jurisdiction” over religion nor any “shadow of right to intermeddle” with it.⁶

⁵*Board of Education vs. Minor*, 23 Ohio State, 211.

⁶*Brant, op. cit.*, pp. 131, 176.

BOOK REVIEWS

The Free Church Through the Ages. By Gunnar Westin. Translated by Virgil A. Olson. Nashville, Tennessee: Broadman Press, 1958. x+363 pp. \$4.75.

Professor Westin modestly calls his compact volume a "handbook," but it deserves a more scholarly label. It is an inspiring and timely story—hitherto told only episodically—of the long and tortuous struggle of "heretics" and "subversives" to win the religious freedom which Americans take for granted today, even in the face of renewed authoritarian threats.

Professor Westin compresses into 363 pages the histories of a bewildering variety of sects, the activities of hundreds of free-church crusaders, and a discussion of the social and political climate of the numerous countries in which free-churchism took root. His treatment of some topics is necessarily superficial. Yet he brings the free-church movement into sharper focus, recognizes its significant role in the cultural life of the modern world, and treats it as a continuous stream rather than a series of isolated and spontaneously generated protests against the orthodox churches. His book shows evidences of extensive research, but its chief value lies in its synthesis rather than its originality.

The Free Church through the Ages is not a polemic, as one might suspect. Professor Westin is a prominent Swedish Baptist and, in the words of Dr. Kenneth Scott Latourette, is "a staunch protagonist of a free church in a land where religious liberty was won with difficulty." But he is also a distinguished scholar and church historian, and he writes as a historian, not as an advocate. He remains surprisingly detached and only seldom reveals his sympathies. Perhaps he is too restrained. One feels that he has failed to capture some of the drama inherent in his story.

The author defines the "free church" as those distinct groups in history which, through the medium of preaching, have voluntarily accepted the gospel of Jesus, turned from paganism, embraced biblicism and righteousness, repudiated authoritarianism, and denied the religious competence of the state. Often they have eschewed the society in which they have existed.

For the first two or three centuries all the Christian churches were "free." But during the fourth century organized Christianity underwent a devastating and cataclysmic change in both status and

attitude. It was transformed from voluntary associations of despised but regenerated individuals into a powerful sacramental, authoritarian, and dogmatic "orthodox" church closely allied with the state. The free churches were driven underground and were henceforth—until their triumph in America—hunted down and brutally persecuted as heretics and subversives.

Professor Westin's treatment of the pre-Reformation groups (Montanists, Paulicans, Waldenses, Lollards, and the like) and the twentieth-century free churches (Congregationalists, Baptists, and Methodists) is disappointing. But his treatment of the Anabaptists of the sixteenth and seventeenth centuries is excellent, although disproportionately long and somewhat repetitious. He seems to be thoroughly familiar with the recent researches in Anabaptist history sponsored by the American Mennonites. He rightly treats the Anabaptists as a third, and highly significant, branch of the Reformation—the left wing of the religious revolt, feared and persecuted by Lutherans, Calvinists, and Catholics alike.

With more discrimination than some historians have shown, the author properly distinguishes between the biblical, congregational, quietistic Anabaptists of the Hubmaier type and the radical, chiliastic, and communistic ones of the Matthys type. Many of the Anabaptist leaders (such as Hubmaier, Grebel, Denck, and Riedemann) were university men—learned, able, moderate, and sincere. But under persecution these men disappeared as martyrs and their movement—forced into the rural areas—fell under the control of illiterate and fanatical men who brought opprobrium to the Anabaptist name.

Of interest to students of Baptist history is the connection which Professor Westin detects between the Low Country Mennonites (the true offspring of the Anabaptists) and the English Baptists, particularly those of the Arminian variety.

The overall quality of the book is high. It has many earmarks of a scholarly production—coherence, compactness, logical arrangement, and an impressive bibliography. Interpretations are few but penetrating; the style is readable, if not colorful; and the interest holds throughout. There are no footnotes, and the index, which lists only the names of persons, is irritatingly inadequate. But these are minor faults.

One cannot read this volume without wondering what the future holds in store for the free churches. Will they preserve their heritage, or will they succumb to the threats of respectability, con-

formity, and authoritarianism from both within and without their ranks?

E. BRUCE THOMPSON

American Freedom and Catholic Power. By Paul Blanshard. Second Edition, Revised and Enlarged. Boston: Beacon Press, 1958. xxii+ 402 pp. \$3.95.

This revised edition differs in no essential respect from the original (1949) work. The chapter headings are identical and the author's conclusions are the same. A few more pages of text have been added, the bibliography enlarged, and a "Calendar of Significant Events, 1947-1957" appended. Otherwise the revision consists primarily in bringing factual data and illustrative material up to date.

Author Blanshard's thesis is that certain policies of the Roman Catholic Church are inimical to basic American freedoms. Throughout the book he distinguishes between the Catholic *people* of the United States and the Catholic *hierarchy*. Individual Catholics, he asserts, are as dedicated to American ideals as other citizens and have as much to lose to a tyrannical hierarchy as other Americans. Ironically, however, the Catholic people are the unwitting instrument through whom the hierarchy hopes to accomplish its purposes by means of censorship, thought control, and the threat of excommunication.

The author has avoided the extremes of emotionalism which have characterized so much anti-Catholic writing of the past. His moderate approach is marred, however, by occasional resorts to sarcasm, guilt-by-association tactics, and the error of assuming—or leading his readers to conclude—that policies announced by the hierarchy generations ago and not specifically repudiated are still held and observed throughout the Catholic world. The overall tone is antagonistic, as evidenced by the author's all too frequent use of such phrases as "conspicuous medievalism" (p. 22), "devices of brain-washing" (p. 89), "the twisted and bizarre 'principles' of the Catholic sexual code" (p. 183), "stupid pressure antics" (p. 243), and "ecclesiastical imperialism" (p. 341).

After making due allowance for the author's personal antipathy for the Catholic system, there remains, however, enough adequately documented evidence to give any American—Catholic as well as

non-Catholic—occasion to ponder the potential danger of Catholic control to traditional American liberties. The basic threat arises from the Church's extreme claims to jurisdiction beyond what most Americans would consider the field of religion and to the Church's policy of relying on the police powers of the state to enforce its wishes. The Church's claim to supremacy in matters of "faith and morals" has been interpreted to include education, marriage and the family, censorship of the press, dissemination of birth control literature, certain medical practices, and the free exercise of non-Catholic faiths—and the list is capable of being extended *ad infinitum*.

The author's best case is made in the field of education. There is no doubt that a basic conflict exists between the Catholic claim over education and the American principle of public-controlled education. Admitting that education was at one time a near-monopoly of religion, the conflict nevertheless exists between the present Catholic position and the twentieth century American principle. Also a contradiction exists between the Catholic Church and most Americans in the use of public funds for parochial schools and for other types of sectarian-controlled institutions.

While the possibility seems remote at the present time that the Catholic Church will become sufficiently strong in the United States seriously to challenge basic liberties, the abridgement of these liberties in Catholic dominated countries like Spain and Portugal and in the province of Quebec is enough to cause concern in this country in which the Church claims to have added more than ten million adherents in the last decade. The value of such a book as this lies in its call to vigilance and in its potential influence in leading the Church to modify some of its "un-American" practices and policies. Catholicism is not a universal conformity in spite of its universal claim. The Church has changed in the past, and by a frank discussion of its present policies, devoid of contention and rancor, the Church may be bent still further away from its historical precedents toward the twentieth century ideals of tolerance and freedom. The reviewer cherishes such hopes.

RUFUS B. SPAIN

Church and State in Scripture, History, and Constitutional Law.

By James E. Wood Jr., E. Bruce Thompson, and Robert T. Miller. Waco: Baylor University Press, 1958. vii+148 pp. \$3.00 cloth. \$1.75 paper.

This is the first book published under the auspices of the J. M. Dawson Studies in Church and State at Baylor University. The authors are professors of religion, history, and political science at Baylor, and the primary purpose of this volume is to serve as a book of readings in certain courses in these departments. The nature of the study is such, however, that it should appeal also to the general reader.

In Part One Professor Wood discusses the concept and the role of the state in the Old Testament, the attitude of Jesus and Paul toward civil government, and the Johannine view of the state. The first chapter is a brief summary of Israel's constitutional history as a background for the Hebrew conception of the state. The Jews made a pronounced distinction between ruler and priest; they did not ascribe deity to their Kings. Although Jesus recognized the political authority and the functions of the state, he did not regard it as a divine institution and he did not hesitate to condemn evils connected with civil government. Paul's ideas, Professor Wood believes, "determined for many centuries the attitudes of the Church toward political and social questions." The author gives a concise explanation of Paul's views on civil government. John, in contrast to Jesus and Paul, held a hostile view of the state. This is understandable when one remembers that in John's time the Roman government was persecuting Christians.

In three chapters Professor Thompson traces the historical development of the principle of separation of church and state. From Gelasius I of the late fifth century to the death of Boniface VIII in 1303 Roman Catholic popes claimed supremacy over political governments with the "prerogative to judge and punish a civil ruler." Martin Luther, on the other hand, taught his followers that religion was subordinate to the state and that the civil ruler was the head of the church. John Calvin's views were much closer to those of the medieval popes. Calvinism, in the opinion of Professor Thompson, "was a formidable obstacle to the achievement of . . . freedom of conscience and the separation of church and state." The author discusses several factors that undermined

the old order of established churches in the American colonies. He characterizes the changes of the religious scene in the United States in the final quarter of the eighteenth century as "one of the greatest revolutions in the history of Christianity." Here, as elsewhere in this study, Professor Thompson is an objective historian. While not neglecting to point out the important contributions to the cause of religious liberty and the separation of church and state made by Baptists, he recognizes the work of deists, Quakers, Presbyterians, and the Roman Catholic Archbishop John Carroll.

Part Three, entitled "The Development in Constitutional Law of the Principles of Religious Liberty and Separation of Church and State," has two chapters, one dealing with state courts and the other with the federal judiciary in regard to church-state relations. Professor Miller has found considerable judicial consistency in such matters as Sunday observance laws, protection of religious assemblies, and religion and public health as interpreted by state courts. In the more controversial subject of the public schools the author discusses most of the leading cases relating to Bible reading, free textbooks for sectarian schools, free transportation, and the wearing of distinctive garbs by teachers in public schools. The United States Supreme Court was first called upon to define freedom of religion with direct reference to special religious practices almost a century after the adoption of the Constitution in several cases involving Mormons convicted of bigamy or polygamy. In more recent years the Court has been called upon time after time to interpret the fundamental principle of religious liberty in relation to some practice of the Jehovah's Witnesses. Professor Miller devotes ten pages to a review of the many cases involving this sect. In this connection the author says, "it cannot be doubted that constitutional law owes a considerable debt to the often truculent but always tenacious Jehovah's Witnesses."

The book is documented and there is a list of suggested readings. If thorough research and good writing are the criteria of a good book, the authors have wrought well.

J. D. BRAGG

Christians and the State. By John C. Bennett. New York: Charles Scribner's Sons, 1958. xvii+302 pp. \$4.50.

The author succeeds in giving a good discussion of the background of thought and life from which particular problems of church and state arise.

Some of these particular problems are discussed in the chapters "Grounds for Separation," "Meaning of Separation," "Education," "A Protestant View of Roman Catholic Power," "Direct and Indirect Action of the Church upon the State," and "The Christian Citizen and Politics."

The main contribution of the book is in the section on "The Christian Understanding of the State and its Functions." Anarchy and the absolute state are inimical to Christianity. "Christian thinking about the state must insist it be a limited instrument of society . . ." The dangers inherent in enacted laws which do not take into consideration basic right and justice in the nature of man and society are set out. Although the author questions some uses of the concept and expression "natural law" yet he definitely states that there must be the recognition of the truth which is basic in the concept. The dangers of "legal positivism" combined with "moral relativism" are clearly shown and documented by quotations from some leading American jurists.

The role of the state in economic life and the responsibility of Christianity are epitomized in the statement, "It is as important for the churches to avoid baptizing a Christian Capitalism as it is important for them to avoid the identification of Christianity and Socialism."

A recognition of the priority of the Kingdom of God over every expression of human society is in the statement, "The view of the future that I have briefly outlined means that the Kingdom of God can be partially embodied in society, but that it will also be a source of judgment upon society." The kingdom is relevant to all social orders, but can be identified with none.

The author's ability in the fields of theology, ethics, sociology, and government is shown in a very constructive approach to an adequate philosophy of church-state relationships.

GEORGE C. HUMPHREY

Liberty and Justice: A Historical Record of American Constitutional Development. Edited by James M. Smith and Paul L. Murphy. New York: Alfred A. Knopf., 1958. 566 pp. \$6.75.

In this collection of documents the editors have as their avowed aim an effort to "illuminate some of the historical problems encountered in working out a system of ordered liberty in the United States," and to "integrate our constitutional growth with the total evolution of American democracy." In attempting to achieve this broad aim, they included some 276 selections, which is a figure well in excess of that usually found in a collection of this length.

The selections are arranged chronologically, yet topically as well within the chronological periods. Chronologically, the documents, some complete and some excerpted, date from the Charter of Virginia of 1606 to the "Statement by One Hundred Leading Lawyers About Recent Attacks on the Supreme Court" issued in 1956. In all, there are twenty-eight chapters covering three centuries and a half, but weighted more heavily in favor of those documents of the past thirty years, with eight chapters being devoted to that relatively short span of years. The editors were impressed with the need of such emphasis on recent events because of the greater public interest in recent problems, the great revolution which has unquestionably occurred since 1935, and the further fact that no significant book of readings in constitutional history has appeared since 1926.

A brief introduction by the editors precedes each of the chapters. Apparently in an effort to include as many selections as possible, these introductions are held to a bare minimum in length. Perhaps for the same reason many of the documents are pared rather heavily, resulting in somewhat briefer excerpts than are found in many similar collections. However, the editing, in general, has been carefully done so as to cut out much extraneous material and yet retain with integrity the intent and general spirit of the original documents.

Over half of the documents are excerpts from decisions of the Supreme Court; but included also are many basic historic documents, presidential state papers, congressional debates, and publications and personal correspondence of leading authors and political figures of the periods involved. Though there are some extracts from such theorists as John Locke, John Taylor, John C. Calhoun, and Alexis de Tocqueville, the great emphasis is placed consciously upon the "practical" documents rather than upon

expressions of theory, because of the conviction of the editors that American constitutionalism and culture, though undoubtedly influenced by theory, are composed primarily of pragmatic elements.

The book is obviously not intended in any respect as a specialized book of readings in the area of church and state relations, but there are selections of peculiar interest to this area. Of special relevance are such excerpts as "The Bloody Tenent of Persecution for Cause of Conscience Discussed," written by Roger Williams in 1644, and the Act for Establishing Religious Freedom in Virginia adopted in 1786. There are numerous documents and court decisions of interest in the closely associated realms of freedom of speech and the other basic liberties, found particularly in two chapters on recent events entitled "The Roosevelt Court and Civil Liberties" and "First Amendment Freedoms," respectively.

In the chapter dealing with the Roosevelt Court are included excerpts from two of the Jehovah's Witnesses cases which were of great significance in the recent development of constitutional law in the field of freedom of religion. Similarly, in the chapter on the First Amendment Freedoms are found extracts from two of the three basic cases in which the Supreme Court was called upon for the first time to deal with the vital question of the meaning of the "establishment of religion" clause of the First Amendment. These are the *Everson* case, in which the Court upheld the legality of a New Jersey statute providing for tax-supported transportation to parochial as well as public schools, and the *Zorach* case of 1952, in which a type of "released time" program of religious instruction in the public schools of New York was approved after the Court had struck down an earlier arrangement in the celebrated *McCollum* case of 1948. It is in the *Everson* case that the Supreme Court gave its most extended interpretation of the prohibitions imposed upon government in the realm of religion by the "establishment" clause.

Considering that the collection extends over a period of three and a half centuries, the choice of documents is good; and there is sufficient editorial comment, though brief, to give guidance and direction to the reader. The book should be particularly beneficial as supplemental reading for students of American constitutional development. However, it should also develop in the layman an awareness of the existence of many problems in our constitutionalism, past and present, largely unknown to the American public. The

selections should stimulate the appetite of students and laymen for further reading and consideration of many of these selections in their uncut form as well as other similar documentary material not made available here.

ROBERT T. MILLER

The Political Ethics of Alexander Campbell. By Harold L. Lunger. St. Louis: The Bethany Press, 1954. 304 pp. \$3.00.

It is important for all to know the church-state views of the founder of a major denomination in the United States. The author of this excellent volume did his graduate work at Oberlin and Yale, and has delivered its contents to students of the College of the Bible in Lexington, Kentucky, and classes at Texas Christian University and other institutions. We may presume that his findings in respect to Alexander Campbell are factual and objective.

Campbell, a native of County Antrim, Ulster, North Ireland, was born in 1788 and died March 4, 1866, at his home in Bethany, West Virginia. He came of seceder Presbyterian stock and as long as he remained a Presbyterian strongly opposed the Presbyterian established Church of Scotland. When he joined the Baptists at Washington, Philadelphia, in 1812 he was already ardently committed to the Baptist distinctive—complete separation of church and state. His later defection from the Baptists proved a serious loss to them.

Although a preacher and religious editor, he served as a member of the Virginia Constitutional Convention of 1829. He collaborated with James Madison in that convention in safeguarding the principle which he and the denomination which he founded were to espouse as powerfully as any religious group in this country.

Campbell opposed infant baptism, not only upon theological grounds, but from the conviction that it engendered a persecuting spirit. His reasoning was that infant baptism really presupposes membership in the church, and is coterminous with the population. Its advocates, he argued, tend to invoke the powers of the civil authority against dissenters. Because Roman Catholics, Episcopalians, and Presbyterians as established churches had used state police power to enforce their mandates, he termed them "royal setcs," and in his observation Presbyterians were the most dangerous of the so-

called "royal sects," an opinion which Thomas Jefferson at one time expressed. Campbell considered religious liberty something far more fundamental than a grant of any government. "So jealous was he of religious liberty," declares Lunger, "that he sounded the alarm whenever he saw anything that remotely seemed to threaten it."

It might well be understood that Campbell would stoutly resist all allocations of state tax funds for sectarian purposes. Few, however, are aware of his vehement demand for public schools in place of church schools for elementary education, coupled with a plea for religious exercises in the public schools, a strange inconsistency which the author acknowledges. Here, as elsewhere, Lunger points out what might be called errors in Campbell's profuse writings.

The tradition of church-state separation bequeathed to the Disciples of Christ by their great founder has been conspicuously kept. No one in our generation has done more to promote the maintenance of this principle during his lifetime than the eminent disciple, Dr. Charles Clayton Morrison, with his distinguished periodical, *The Christian Century*, which has continuously waged a vigorous battle for the historic principle of the separation of church and state.

JOSEPH M. DAWSON

Justice Reed and the First Amendment: The Religion Clauses.

By William O'Brien. Washington, D.C.: Georgetown University Press, 1958. xi+264 pp. \$5.00.

Although this book is written primarily as a study of Justice Reed's attitude toward religious liberty during the nineteen years he was on the Supreme Court, it is in fact a rather thorough analysis of the whole question of religious freedom in America. It deals largely with court decisions; yet it is written in a style that laymen can understand and appreciate. The book is more than just an explanation of the cases touching upon the religious clauses; it weighs the decisions the one against the other for consistency and logic. Is the religious activity of any group above the police power of the state? Does religious liberty have a preferred right among our various constitutional rights? How much discretion can local officials be given in matters of granting permits to hold worship services without being unconstitutional? How much delay, expense, and annoyance can a person be put to as a price of

exercising his right to hold public worship? These and many other aspects of the question of religious freedom are weighed in this little book. It shows the difficulty of balancing the competing rights of a community to peace, order, and convenience against the right to worship and to proselyte. The person genuinely interested in seeking an understanding of the constitutional right of religious freedom under the First Amendment could well afford a few hours with this book.

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